



State of Wisconsin • DEPARTMENT OF REVENUE

DIVISION OF STATE AND LOCAL FINANCE • BUREAU OF UTILITY AND SPECIAL TAXES • 2135 Rimrock Road • P.O. Box 8971 •
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REAL ESTATE TRANSFER NEWS (RETN) MARCH 2002

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Wisconsin Department of Revenue
Division of State & Local Finance
Bureau of Utility & Special Taxes
P.O. Box 8971, MS 6-97
Madison, WI 53708-8971

PLEASE NOTE THE BUREAU'S P. O. BOX NUMBER AND MAIL STOP (MS) NUMBER ABOVE

This newsletter may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

1Q. I filed my deed and paid the transfer fee in the wrong county. How do I get a refund so I can record and pay the fee in the correct county?

- A.** Filing deeds and the payment of fees in the wrong county is the most frequent reason for refunding of transfer fees. The following steps must be completed before a refund is issued:
1. Rerecord the deed and pay the fee again in the proper county.
 2. Send to the Bureau of Utility & Special Taxes at the address above the following:
 - a. Copy of both recorded deeds or the one re-recorded deed, showing fees paid to both counties.
 - b. A letter explaining the situation and designating whom should get the refund. Since the fee is assessed against the grantor, refunds are issued to the grantor. However, as with most improper recordings, the title company advances the fee in the proper county and then requests the refund be issued to them.

2Q. I paid the transfer fee when I recorded the deed, but now I believe it should have been exempt from fee. How do I apply for a refund?

- A.** Complete an "Amended Transfer Return" and send it to the address above. An "Amended Transfer Return" is completed in the same manner as the return used to record the deed except now enter the exemption number that you are claiming. The word "Amended" is put on the top of the form. Along with the amended return, you will need to furnish a copy of the document that was recorded showing the transfer fee paid and a letter of explanation requesting the refund with documentation to substantiate the exemption. Example, you now claim exemption 8 as a gift between parent and child. You would have to submit a copy of Form 709, United States Gift Tax Return to show that the conveyance was a gift without consideration. Since the transfer fee is assessed against the grantor per s. 77.22, Stats., refunds are issued to the grantor unless specifically requested otherwise.

3Q. An unmarried couple owns a house jointly and now one wants to convey their interest to the other. Is a transfer fee due and if so, what is the value?

- A.** A transfer fee is owing on one half the value of the property. The conveyance is not exempt as partition under s. 77.25(5), Stats. since there is a loss and a gain of an ownership interest. See RETN, October 2000, Item 4Q regarding partition. Also, exemptions 3 and 10 do not apply, see RETN, October 1997, Item 4Q regarding "correction deeds" and "solely to provide or release security for a debt."

4Q. Under what circumstances may we accept deeds (instruments) without a transfer return?

- A.** When a deed or other instrument is presented for recording without a transfer return, there needs to be some instruction on the document for the Registers' to form a judgment for acceptance or rejection. Examples of "nonconveyances" of real property where no returns are needed:
- a. The recording of a document from an existing partnership converting to a limited liability partnership (LLP): "This is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee. This is a confirmation deed pursuant to s. 178.40, Stats. to give notice of an existing partnership converting to a limited liability partnership. "
 - b. Husband and wife as "joint tenants with right of survivorship" to reclassify title as "survivorship marital property": "Same parties changing the classification of title and is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee."
 - c. An option or right of first refusal to purchase: "This is an option (or right of refusal to purchase) and is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee Per Tax 15. 01, Wis. Adm. Code."

Memorandums, notices, etc., need a transfer return unless nonconveyance is claimed as in the examples above. The claiming of an exemption that does not need a return (exemptions 1, 2r, 4, and II and above cited examples) must be the responsibility of the parties to the transaction and not the Registers of Deeds. The Registers should never accept such claim of exemption verbally.

5Q. When is a transfer fee due on a Sheriff's Deed and how is the transfer return completed?

- A.** A transfer fee is due whenever a "third party" is the successful bidder. A "third party" is defined as someone who is not holding a lien or mortgage on the property or if under a land contract, is not the seller (vendor). Usually lien holders are listed as plaintiffs or defendants in the foreclosure judgment; consequently, the propriety of the exemption per s. 77.25(14), Stats. is fairly easy to establish. The Sheriff acts as trustee/fiduciary for the debtor and does not have title to the property; therefore, the Sheriff is **NOT** the grantor and the exemption per s. 77.25(2), Stats. **cannot** be used.

When a transfer fee is due, it is calculated on the amount of the successful bid and is to be paid out of the proceeds on the sale in the same manner as all other expenses are paid per WI. Stats. 846.16. The statute further states the Sheriff shall deposit a completed transfer return, a transfer fee (if due) and the sheriff's deed with the Clerk of Court who shall then transmit all to the Register of Deeds. The Sheriff is acting as trustee/fiduciary for the debtor and is responsible to ensure that these expenses are properly satisfied. In the past, since the Sheriff is to collect the fee, the Department has sent any additional transfer fee assessments to the sheriff to collect when exemption 14 was improper.

The proper name for PART 1 - GRANTOR is the debtors' (title holder) name and, likewise, their social security number. If the debtor's social security number and address cannot be obtained after a reasonable search, N/A may be put on the return. The Sheriff does not have title to the property and is not the grantor. The Sheriff's name, address and telephone number must be placed in PART X - CERTIFICATION as grantor's agent. The remaining parts of the return are to be completed in the same manner as with any other conveyance.

6Q. An attorney sent two Trustee's Deeds marked Exemption 11 with no transfer returns. Is it OK to accept with exemption 11, by will decent or survivorship?

- A.** No. These are exempt per 9 "from a trustee to a beneficiary" and a return is required. They can only use exemption 11 from an estate - (deceased individual) pursuant to will etc.

7Q. Can a limited liability company have as its sole member another entity such as a corporation and be exempt from transfer fee per s. 77.25(15s), Stats.?

- A.** No. The exemption requires that the member be an individual or in the case of multiple members, be related to each other as spouses, lineal ascendants, lineal descendants, siblings, or spouses of siblings. An entity could not possibly meet the relationship requirement of the exemption. See RETN, October 1997, 2Q for relationship requirements. Note that Sole member applies to corporations and limited liability companies only and not to partnerships.